

1 RONALD K. ALBERTS (SBN 100017)
LISA K. GARNER (SBN 155554)
2 JENNIFER L. MARKS (SBN: 236275)
GORDON & REES LLP
3 633 West Fifth Street, Suite 4900
Los Angeles, CA 90071
4 Telephone: (213) 576-5000
Facsimile: (213) 680-4470
5 Email: ralberts@gordonrees.com
Email: lgarner@gordonrees.com

6 Attorneys for Defendants
7 AETNA LIFE INSURANCE COMPANY and
CIRCUIT CITY STORES, INC. LONG TERM DISABILITY PLAN
8

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

11 CHRISTINE GILMOUR,

12 Plaintiff,

13 vs.

14 AETNA LIFE INSURANCE
COMPANY; CIRCUIT CITY
15 STORES, INC. LONG TERM
DISABILITY PLAN,

16 Defendants.
17
18

CASE NO. C08 02803 RS

Complaint Filed: June 5, 2008

**AETNA LIFE INSURANCE
COMPANY AND CIRCUIT CITY
STORES, INC. LONG TERM
DISABILITY PLAN'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

19 COMES NOW Defendants AETNA LIFE INSURANCE COMPANY and
20 CIRCUIT CITY STORES, INC. LONG TERM DISABILITY PLAN
21 ("Defendants"), respond to the allegations of the First Amended Complaint in
22 accordance with the numbered paragraphs therein, as follows:

23 1. Responding to Paragraph 1, Defendants admit this is an action
24 governed by ERISA and that this court has subject matter jurisdiction. Except as
25 specifically admitted, Defendants deny each and every remaining allegations.

26 2. Responding to Paragraph 2, Defendants admit that Plaintiff was an
27 employee of Circuit City Stores, Inc. Defendants lack sufficient information to
28 admit or deny the whereabouts of Plaintiff's residency, and based thereon, deny the

1 allegations. Except as specifically admitted, Defendants deny each and every
2 remaining allegations.

3 3. Responding to Paragraph 3, Defendants admit that Aetna Life
4 Insurance Company is a Connecticut corporation with its principal place of
5 business in Hartford, Connecticut and further admit that it is licensed to and does
6 business in the California. Defendants admit that Aetna is the claim administrator
7 and insurer of benefits for the Circuit City Stores, Inc. Long Term Disability Plan.
8 Except as specifically admitted, Defendants deny each and every remaining
9 allegation.

10 4. Responding to Paragraph 4, Defendants admit that the LTD Plan is an
11 employee welfare benefit plan regulated by ERISA, established by Circuit City
12 Stores, Inc., under which plaintiff was a participant. Except as specifically
13 admitted, Defendants deny each and every remaining allegation.

14 5. Responding to Paragraph 5, Defendants admit that this case is
15 properly venued in this court. Except as specifically admitted, Defendants deny
16 each and every remaining allegations.

17 6. Defendants incorporate and hereby reference their responses to
18 Paragraphs 1 through 5 as if set forth herein in full.

19 7. Responding to Paragraph 7, Defendants admit that Plaintiff was
20 employed by Circuit City Stores, Inc. and was a participant of the LTD Plan.
21 Except as specifically admitted, Defendants deny each and every remaining
22 allegation.

23 8. Responding to Paragraph 8, Defendants deny the allegations.

24 9. Responding to Paragraph 9, Defendants admit that Plaintiff made a
25 claim to Aetna for LTD benefits under the LTD Plan. Defendants admit that
26 Plaintiff's claim for LTD benefits was denied. Defendants admit that Plaintiff
27 appealed. Except as specifically admitted, Defendants deny each and every
28 remaining allegation.

10. Responding to Paragraph 10, Defendants deny each and every allegation.

11. Responding to Paragraph 11, Defendants deny each and every allegation.

12. Responding to Paragraph 12, Defendants admit that Plaintiff exhausted all administrative remedies required under ERISA. Except as specifically admitted, Defendants deny each and every remaining allegation.

13. Responding to Paragraph 13, Defendants deny each and every allegation.

14. Responding to Paragraph 14, Defendants deny each and every allegation.

15. Responding to Paragraph 15, Defendants deny each and every allegation.

AFFIRMATIVE DEFENSES

16. Defendants allege the following as further and separate affirmative defenses to Plaintiff's Complaint:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

17. These answering Defendants allege that the Complaint and each of the claims that are asserted against Defendants fail to set forth facts sufficient to constitute a claim for relief against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

18. These answering Defendants are informed and believe, and thereon allege, that the Complaint is barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

19. These answering Defendants are informed and believe, and thereon

1 allege, that the Complaint is barred by the doctrine of waiver.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 **(Failure to Mitigate Damages)**

4 20. These answering Defendants allege that, if Plaintiff was damaged as
5 alleged in the Complaint, or at all, that she failed to mitigate her alleged damages,
6 and any recovery herein shall be barred or accordingly reduced to the extent that
7 such damages were not mitigated.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 **(Failure to Comply with Conditions Precedent)**

10 21. These answering Defendants are informed and believed, and thereon
11 allege, that Plaintiff's causes of action are barred, in whole or part, to the extent
12 that Plaintiff failed to comply with the conditions precedent under the Plans at
13 issue in this litigation and/or pursuant to applicable California law.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **(Reasonable Conduct)**

16 22. These answering Defendants allege that all acts done by them were
17 performed fairly, in good faith, and for a lawful purpose, and these answering
18 Defendants' conduct was in compliance with the explicit and implied terms of the
19 Plans at issue in this litigation and its obligations under applicable law.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(Acts or Omissions of Others)**

22 23. These answering Defendants allege that if Plaintiff was injured as
23 alleged in the Complaint, she was injured by acts or omissions of persons or
24 organizations other than Defendants, who were neither under the control of, nor in
25 the employ of, Defendants.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 **(Privileged Conduct)**

28 24. These answering Defendants allege that each and every act or

Gordon & Rees LLP
633 West Fifth Street
Suite 4900
Los Angeles, CA 90071

1 statement done or made by these answering Defendants and their officers,
2 employees, agents or insurers with reference to the matters at issue, was a good
3 faith assertion of the rights and obligations, and therefore, was privileged or
4 justified.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Offset of Payment)**

7 25. If Plaintiff is entitled to payment of any benefits, any such payment
8 must be reduced and offset by any and all other income benefits, as defined in the
9 Plan, payable to Plaintiff.

10 **TENTH AFFIRMATIVE DEFENSE**

11 **(Own Occupation)**

12 26. Plaintiff did not suffer from injury or disease of a severe nature that
13 would have prevented Plaintiff from performing the material duties of her own
14 occupation.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **(Failure to Meet the Definition of Total Disability)**

17 27. Plaintiff was not totally disabled as defined by the terms and
18 conditions of the applicable long term disability plan in that she was able to
19 perform the material duties of her own occupation.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 **(Right to Assert Additional Defenses)**

22 28. Plaintiff fails to plead claims with sufficient particularity to permit
23 Defendants to determine all applicable defenses. Defendants reserve the right to
24 assert additional defenses as information is obtained through discovery and
25 investigation.

26 WHEREFORE, Defendants Aetna Life Insurance Company and Circuit City
27 Stores, Inc. Long Term Disability Plan pray for relief as follows:

28 1. That Plaintiff take nothing by way of her Complaint;

2. That Defendants be awarded their attorneys' fees and costs of suit incurred in defending against this action; and

3. For such other and further relief as the Court may deem just and proper.

Dated: July 30, 2008

GORDON & REES LLP

By: 

Ronald K. Alberts

Lisa K. Garner

Jennifer L. Marks

Attorneys for Defendants

AETNA LIFE INSURANCE

COMPANY and CIRCUIT CITY

STORES, INC. LONG TERM

DISABILITY PLAN

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**CERTIFICATE OF INTERESTED
PARTIES PURSUANT TO LOCAL
RULE 7.1-1 AND FEDERAL RULES
OF CIVIL PROCEDURE 7.1**

Pursuant to Local Rule 7.1-1, and Federal Rules of Civil Procedure Rule 7.1, counsel of record for defendants Aetna Life Insurance Company and Circuit City Stores, Inc. Long Term Disability Plan certifies that the following listed parties may have a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

1. Christine Gilmour, named as plaintiff herein;
2. Aetna Life Insurance Company and Circuit City Stores, Inc. Long Term Disability Plan, named as defendants herein.

3. Aetna Inc., parent corporation of Aetna Life Insurance Company.

Dated: July 30, 2008

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